

Chapter 1: Purpose and Needs

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1.1. The Proposed Action

The U.S. Environmental Protection Agency (EPA) proposes to promulgate final regulations that provide for assessment of the potential environmental impacts of nongovernmental activities in Antarctica and for coordination of the review of information regarding environmental impact assessments (EIAs) received from other Parties under the Protocol on Environmental Protection (the Protocol) to the Antarctic Treaty of 1959 (the Treaty). The final rule will be promulgated as required by Public Law 104-227, the Antarctic Science, Tourism, and Conservation Act of 1996 (the Act)¹, which amends the Antarctic Conservation Act of 1978, 16 U.S.C. 2401 *et seq.*, to provide for U.S. domestic implementation of the Protocol. The purpose of this Environmental Impact Statement (EIS) is to evaluate the environmental impacts of the alternatives for the final rule to be proposed and promulgated by EPA.

The final regulations to be promulgated by EPA do not apply to activities conducted by the U.S. government. The National Science Foundation, in conjunction with their management of the United States' Antarctica Program, is responsible for environmental impact assessment of governmental activities in Antarctica in accordance with regulations at 45 CFR 641.10 through 641.22.

1.2. Interim Final Rule for Environmental Impact Assessment of Nongovernmental Activities in Antarctica

The Act provided two years from October 2, 1996, for EPA to promulgate regulations for environmental impact assessment of nongovernmental activities, including tourism, in Antarctica and for coordination of the review of information regarding EIAs received from other Parties under the Protocol. It was expected that the Protocol could enter into force before October 2, 1998, thus, EPA promulgated an Interim Final Rule on April 30, 1997 (40 CFR Part 8), so that the United States (the U.S.) would have the ability to implement its obligations under the Protocol as soon as the Protocol entered into force.²

Because of the importance of facilitating the Protocol's prompt entry into force, EPA believed it had good cause under 5 U.S.C. 553(b)(B) to find that implementation of notice and comment

¹ The [Environmental Protection Agency] shall, within 2 years after October 2, 1996, promulgate regulations to provide for--

(A) the environmental impact assessment of nongovernmental activities, including tourism, for which the United States is required to give advance notice under Paragraph 5 of Article VII of the Treaty; and

(B) coordination of the review of information regarding environmental impact assessment received from other Parties under the Protocol. (16 U.S.C. 2403a(c))

² The Protocol was ratified by the U.S. on April 17, 1997, and entered into force on January 14, 1998, following ratification by all necessary Consultative Parties to the Antarctic Treaty.

procedures for the Interim Final Rule would be contrary to the public interest and unnecessary, and thus the Interim Final Rule, for which EPA prepared an Environmental Assessment (EPA April 3, 1997) and Finding of No Significant Impact (EPA April 9, 1997), was immediately effective upon its publication date (40 CFR Part 8).

Recognizing the importance of full public, including industry, input, EPA stated in the Preamble to the Interim Final Rule that it planned extensive opportunities for public comment in the development of the final regulations. The EPA also stated that an EIS would be prepared which considered the environmental impacts of the proposed final rule and alternatives, and would address the environmental and regulatory issues raised by interested agencies, organizations, groups and individuals.

1.3. Public Involvement: Scoping for the EIS and Opportunity for Public Comment on Draft EIS and Proposed Final Rule

On May 9, 1997, EPA published a Notice of Intent to prepare an EIS for the final rule for environmental impact assessment of nongovernmental activities in Antarctica (F.R. 62, no. 90). In accordance with the National Environmental Policy Act (NEPA), EPA conducted two public scoping meetings. The Notice for the first public scoping meeting for the EIS was published on June 2, 1997 (F.R. 62, no. 105), and the public scoping meeting was held on July 8, 1997, in Arlington, Virginia. The Notice for the second public scoping meeting was published on June 18, 1998 (F.R. 63, no. 117), and the public meeting was held on July 14, 1998, in Washington, DC. Both meetings were held at the time that the Antarctic tour operators were in the Washington, DC, area for their annual meeting with the National Science Foundation. Attendees at these scoping meetings included:

- the Executive Secretary of and legal counsel for the International Association of Antarctica Tour Operators, IAATO, the principle representative of the tour industry;³
- IAATO-member tour operators and other Antarctic tour operators;
- representative of Oceanites, Inc., a nongovernmental research organization;
- the Director of and legal counsel for The Antarctica Project (TAP/ASOC)⁴;
- academics (Antarctic/international law and environmental regulation interests);
- federal agency representatives; and
- the general public.

The July 8, 1997, scoping meeting included an overview and discussion of the Interim Final Rule, and presentation of comments by the public on relevant environmental and regulatory issues which EPA should consider in the Draft EIS. During this meeting, IAATO, individual tour operators,

³ Tour operators are the primary nongovernmental operators subject to the Interim Final Rule.

⁴ The Antarctica Project is the northern hemisphere secretariat for the Antarctic and Southern Ocean Coalition (TAP/ASOC) composed of 230 environmental organizations in 50 countries with 26 members in the U.S.

and TAP/ASOC requested that the deadline for the Interim Final Rule be extended to give the operators an opportunity to determine the "workability" of the requirements of the Interim Final Rule and then to comment to EPA. After consultation with other Federal agencies, EPA determined that this request was reasonable and that additional time to develop the final rule would be beneficial. Thus, EPA issued a direct amendment to the Interim Final Rule, effective July 14, 1998, which extends its applicability through the 2000-2001 austral summer (F.R. 63, no. 72).

There were no formal presentations by EPA at the second public scoping meeting on July 14, 1998. Attendees, including IAATO, tour operators, and TAP/ASOC, presented their comments on the process for environmental documentation under the Interim Final Rule for expeditions conducted during the 1997-1998 austral season.

Chapter 4 summarizes the issues offered at the two scoping meetings for consideration in the Draft EIS, and in the letters, written statements and other documents received by EPA. In addition, the EPA will provide opportunity for public comment on the draft EIS in accordance with the Council on Environmental Quality's implementing regulations for the National Environmental Policy Act (40 CFR Parts 1500-1508). The final rule will be proposed and promulgated in accordance with the provisions of the Administrative Procedure Act (5 U.S.C. 553) which also requires notice to the public, description of the substance of the proposed rule, and an opportunity for public comment.

1.4. Rule-Making Process

The EPA initiated rule-making in November 1996, with establishment of an inter-agency Workgroup to assist in developing the Interim Final Rule promulgated by EPA April 30, 1997. The regulation development Workgroup includes representatives from various offices in EPA and from other Federal agencies with expertise and interests in Antarctica⁵. The regulatory development process employs the policy, guidance and procedures of the EPA's Regulatory Policy Council.

The process for developing final regulations to be promulgated by EPA is now underway and includes this EIS process for analysis of alternatives for the final rule. As part of the Workgroup's proceedings, a Federal agency scoping meeting was held May 14, 1997; in addition, the National Science Foundation provided written comments. The summary of scoping issues, presented in Chapter 4, also includes the issues raised by the Federal agencies.

⁵ EPA offices represented on Workgroup: Office of Enforcement and Compliance Assurance, including the Offices of Federal Activities (lead for rule-making), Regulatory Enforcement, and Compliance; and the Offices of General Counsel, International Activities, Solid Waste and Emergency Response, Water, and the Quality Staff in the Office of Environmental Information. Federal agencies represented on Workgroup: Department of State, National Science Foundation, Department of Justice, Marine Mammal Commission, Council on Environmental Quality, National Oceanic and Atmospheric Administration including the National Marine Fisheries Service, and the U.S. Coast Guard.

The rule-making process will be used by EPA to identify, and resolve, environmental and regulatory issues or concerns on the part of EPA and the Federal agencies, and to fully consider the issues raised during public scoping within the rule-making process.

1.5. Other Legal Mandates and Requirements for Rule-Making

In addition to the Act, a number of other statutes and Executive Orders apply to EPA's rule-making. The Administrative Procedure Act sets out the basic requirements for rule-making which apply to all rules. Other requirements for rule-making procedures flow from other general statutes such as the Paperwork Reduction Act and the Regulatory Flexibility Act. Within the Executive Branch, other requirements are imposed such as Executive Order 12866 which requires the Office of Management and Budget to review proposed and final rules before issuance in most circumstances. Appendix 1 summarizes the other legal mandates and requirements associated with EPA's final rule-making for environmental impact assessment of nongovernmental activities in Antarctica.